IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SECOND DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 22097 of 2004

Between:

Sri. B. Siva Kumar, S/o. B. Sankarappa,
Jadcherla Section, Mahaboobnagar SubDivision, Jadcherla, Mahaboobnagar

District.

..... PETITIONER

AND

1 The Chief Civil Engineer-II, APSRTC, Musheerabad, Hyderabad,.
2 The Executive Engineer, APSRTC, Hyderabad Rural, Mahatmagandhi Bus

Station, Hyderabad.
3 The Dy. Executive Engineer, APSRTC, Mahaboobnagar Sub Division,

Shopping Complex, Bus Stand, Mahaboobnagar.
4 Sri M. Prakash,
MB Sub Division, EE HR Division, Jadherla, Mahaboobnagar District.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court will be pleased to issue an order, direction or a writ more particularly one in the nature of Writ of Mandamus by declaring the action of the R-2 in transferring the petitioner from Jadcherla to Yadagirigutta without considering his request to Hyderabad and inaction of the R-1 on the representation submitted on 17-11-2004 as arbitrary, discriminatory, without application of mind, malice in Law, illegal being violative of the Articles 14, 16 & 21 of the Constitution of India and set aside the impugned order No. EE HR/813 (2) 2002-CED, dt. 4.11.2004 passed by R-2 in respect of the petitioner and R-4 and consequently direct the respondents to consider the request of the petitioner to continue at Jadcherla till the representation made to the R-1 is disposed of and pass such other orders.

Counsel for the Petitioner:MR.KRISHNA DEVAN

Counsel for the Respondent Nos.1 to 4: MR.V.T.M.PRASAD

The Court at the admission stage made the following Order:

THE HON'BLE SRI JUSTICE K.C.BHANU

WRIT PETITION NO.22097 OF 2004

ORDER:

This writ petition is filed to issue a Writ of Mandamus declaring the action of the second respondent in transferring the petitioner from Jedcherla to Yadagirigutta without considering his request for transfer to Hyderabad and the action of the first respondent in not disposing of the representation submitted on 17.11.2004 as illegal and arbitrary.

Learned counsel for the petitioner, Sri Krishna Devan, vehemently contended that as far as possible, the request of the petitioner has to be considered since his wife is working at Hyderabad. He further contended that since the petitioner is an officer bearer of the National Mazdoor Union, APSRTC, Zonal Committee, Hyderabad, his presence is required at Hyderabad, but with a mala fide intention he was transferred to Yadagirigutta. He further contended one of his sons is being treated at Hyderabad and therefore, prays to quash the impugned proceedings.

Learned counsel appearing on behalf of respondents contended that the transfer is incidence of service and the same cannot be challenged in the writ petition.

Petitioner seems to be transferred from Jadcherla to Yadagirigutta. Therefore, he made a representation on 17.11.2004 requesting to transfer him to Hyderabad on the ground that his wife is working at Hyderabad. It is settled law that transfer of an employee is not only incidence of service, but also one of the service conditions. Therefore, the transfer order, if any made by the administrative authorities, cannot be challenged under Article 226 of the Constitution of India unless it is vitiated by mala fides, but no such mala fides are attributed against the transferring authority. Simply because, the wife of the petitioner is working at Hyderabad, and some administrative instructions have been issued that the husband may be posted at the place where wife is working or vice versa, cannot be given any indefeasible right to transfer to a

particular place. However, it is for the first respondent to consider the representation in accordance with the rules and regulations governing the transfer of an employee.

In the circumstances, the writ petition is disposed of with a direction to consider the representation dated 17.11.2004 submitted by the petitioner. No costs.

02.12.2004

Note:CC today

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To

1 The Chief Civil Engineer-II, APSRTC, Musheerabad, Hyderabad,.
2 The Executive Engineer, APSRTC, Hyderabad Rural, Mahatmagandhi Bus Station, Hyderabad.
3 The Dy. Executive Engineer, APSRTC, Mahaboobnagar Sub Division, Shopping Complex, Bus Stand, Mahaboobnagar.
4 Sri M. Prakash,
MB Sub Division, EE HR Division, Jadherla, Mahaboobnagar District.

5. Two CD copies.